

FILED

APR 23 2014

Clerk, U.S. District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

DENNIS DALE MACKEY,

CV 13-50-H-DWM-RKS

Petitioner,

vs.

ORDER

WARDEN KIRKEGARD and the
ATTORNEY GENERAL OF THE
STATE OF MONTANA,

Respondents.

This matter comes before the Court on the proposed Findings and Recommendations entered by United States Magistrate Judge Keith Strong, (Doc. 3), regarding the Petition for writ of *habeas corpus* brought under 28 U.S.C. § 2254 by Dennis Dale Mackey, (Doc. 1). Because Mackey is a prisoner, upon filing, this matter was referred to Judge Strong. *See* L.R. 72.2(a). Judge Strong filed his proposed Findings and Recommendations regarding the Petition on March 25, 2014. (Doc. 3 at 5.) “Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court.” 28 U.S.C. § 636(b)(1). Because the statutory objections period states that a party may file objections

within a specified time after service of the findings and recommendations, and service of the Findings and Recommendations at issue was made by mail and electronic means, three days are added after the period would otherwise expire. *See* Fed. R. Civ. P. 6(d). Accordingly, written objections to Judge Strong's proposed Findings and Recommendations were due April 11, 2014. No objections were timely filed.

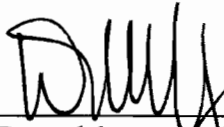
When no party objects, the Court reviews the findings and recommendations of a United States Magistrate Judge for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error is present only if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

Judge Strong's report contains no mistake of fact or law and will be adopted in-full. Mackey's challenge to the Montana Department of Corrections' calculation of his sentences is not a viable federal petition for writ of *habeas corpus* under 28 U.S.C. § 2254 because the facts he alleges do not show a violation of federal law or constitutional right. Mackey's petition will be dismissed with prejudice. Because Mackey's petition fails to make any substantive showing that he is entitled to relief, a Certificate of Appealability will be denied.

IT IS ORDERED:

- (1) The proposed Findings and Recommendations entered by United States Magistrate Judge Keith Strong, (Doc. 3), are ADOPTED IN-FULL.
- (2) The Petition for writ of *habeas corpus* brought by Petitioner Dennis Dale Mackey, (Doc. 1), is DISMISSED WITH PREJUDICE.
- (3) The Clerk of Court shall enter by separate document a judgment in favor of Respondents and against Petitioner, pursuant to Federal Rule of Civil Procedure 58, and close this case.
- (4) A Certificate of Appealability is DENIED. The Clerk of Court shall immediately process any appeal filed by Petitioner Mackey.

DATED this 23rd day of April, 2014.



Donald W. Molloy, District Judge
United States District Court

